Supreme Court, U.S.
FILED
07-594 OCT 30 2007
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No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 2007

Keiti Salim Kayyal and Ousameh Salim Kayyal,
Petitioners,
v.
Peter D. Keisler, Acting U.S. Attorney General,
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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October 2007

QUESTIONS PRESENTED

(1) Whether Section 240(c)(7)(C)(ii) of the Immigration and Nationality Act, 8 U.S.C.§1229a(c)(7)(C)(ii), enacted in 1996, which provides explicit statutory authority for a refugee seeker to affirmatively file a motion to reopen their deportation proceeding to apply for relief under sections 1158 or 1231(b)(3) of title 8 based on changed country conditions, invalidates the Chief Justice Rehnquist's majority holding in *INS v. Doherty*, 502 U.S. 314, 322 (1992) citing to *INS v. Rios-Pineda*, 471 U.S. 444, 446 (1985), which states, "[t]here is no statutory provision for reopening, and the authority for such motions derives solely from regulations promulgated by the Attorney General."

(2) In light of this 1996 congressional action creating explicit statutory authority, whether the Board of Immigration Appeals is justified in continuing to rely on *Doherty* in adjudicating motions to reopen based on changed country conditions. *See Matter of Coelho*, 20 I&N Dec. 464 (BIA 1992).

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IN THE
Supreme Court of the United States

OCTOBER TERM, 2007

Keiti Salim Kayyal and Ousameh Salim Kayyal,
Petitioners,

v.

Peter D. Keisler, Acting U.S. Attorney General,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Keiti Salim Kayyal and Ousameh Salim Kayyal respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit affirming the order of deportation in their immigration case.

OPINIONS BELOW

The order of the court of appeals (App. 6a) is an unreported decision in civil case no. 04-73469. The opinion of the Board of Immigration Appeals (App. 1a-5a) is an unpublished decision.

JURISDICTION

The court of appeals entered its judgment on March 15, 2007 (App., infra, 6a-7a) and denied petition for panel rehearing on September 5, 2007 (App. 10a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 240(c)(7)(C)(ii) of the Immigration and Nationality Act ("INA") states, "[t]here is no time limit on the filing of a motion to reopen if the basis of the motion is to apply for relief under sections 1158 or 1231(b)(3) of this title and is based on changed country conditions arising in the country of nationality or the country to which removal has been ordered, if such evidence is material and was not available and would not have been discovered or presented at the previous proceeding."

Section 240(c)(4)(A) of the INA states, "[a]n alien applying for relief or protection from removal has the burden of proof to establish that the alien -- (i) satisfies the applicable eligibility requirements; and (ii) with respect to any form of relief that is granted in the exercise of discretion, that the alien merits a favorable exercise of discretion."

STATEMENT OF THE CASE

This case involves the construction and interpretation of a provision in the Immigration and Nationality Act, which was created by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 [1] ("IIRIRA"), in light of *INS v. Doherty*, 502 U.S. 314 (1992).

The only issue presented here is whether the so called "heavy burden" standard, as applied by the Board of Immigration Appeals in Petitioners' motion to reopen their asylum application, comports to the explicit changes in the United States Code section by Congressional passage of the IIRIRA. The BIA's precedent decision, *Matter of Coelho*, 20 I&N Dec. 464 (BIA 1992), which was cited to by the Board in their denial of Petitioners' motion, rests squarely on the shoulders of this Court's decision in *INS. v. Doherty*, 502 U.S. 314 (1992), wherein Chief Justice Rehnquist's majority opinion states, "[t]here is no statutory provision for reopening." However, Congress when passing the IIRIRA explicitly created statutory authority for an asylum seeker to reopen their removal proceeding based on a changed country conditions. To date, these two conflicting authorities have not been reconciled.

A. Petitioners' Claim For Relief

This is an immigration case, which concerns the denial of petitioners' political asylum application. Petitioners, a mother and her son, along with their now deceased husband and father, respectively, fled their

---

[1] Ref. Public Law 104-208, September 30, 1996.

country of origin, Jordan, seeking refuge in the United States after the husband served the United States Embassy in Amman, Jordan for over fifteen years. They are of Palestinian origin, with Keiti Kayyal having been born in Palestine during the British Mandate and fleeing with her family to Jordan during the 1948 war. Ousameh Kayyal was born in a refugee camp in Jordan. Both petitioners' carry Jordanian passports.

Petitioners are Christians and their now deceased father and husband, respectively, worked for approximately seventeen years at the United States Embassy in Amman, Jordan. The basis of petitioners' asylum and withholding applications are past persecution they received on account of their religious practices and well-founded fear of future persecution at the hands of Islamic forces the government of Jordan is unable to control.

On September 30, 1994, petitioners' initial asylum application, which was filed defensively after being placed into removal proceedings, was denied. The subsequent appeals to the BIA and to the circuit court were unsuccessful.

B. *Petitioners' Motion to Reopen Pursuant to INA § 240*

After the terrorist attacks on the World Trade Center in New York on September 11, 2001, petitioners' brought a motion to reopen their deportation matter before the BIA, based upon changed country conditions pursuant to INA § 240(c)(7)(C)(ii), alleging that removal to Jordan would subject them to persecution on account of their status as Christians Palestinians.

The BIA denied petitioners' motion, citing to the "heavy burden" standard the administrative agency imposes upon any movant in adjudicating such motions to reopen, as they held in *Matter of Coelho*, 20 I&N Dec. 464 (BIA 1992).

The Ninth Circuit Court of Appeals affirmed the agency decision. In their decision, the court of appeals used the abuse of discretion standard of review in holding on the alternative ground that Petitioners' failed to establish prima facie eligibility for relief. Petitioners' petitioned the circuit court for a panel rehearing basing their motion on the fact that their brother and son, respectively, had been granted asylum and cancellation from removal in his merit hearing before the immigration judge on similar facts as contained in Petitioners' application. [2] The circuit court denied the petition for panel hearing.

The question of whether Petitioner have met the "heavy burden" standard for a motion to reopen before the BIA was not explicitly addressed in either the briefings by the parties, nor in the circuit court's decision. [3]

REASONS FOR GRANTING THE PETITION

The BIA impermissibly imposes a "heavy burden" standard on any refugee seeker in deportation proceedings moving to reopen their matter on the basis of changed country conditions. The Board's seminal case on this point is *Matter of Coelho*, 20 I&N Dec. 464, 472 (BIA 1992), which cites to *INS v. Abudu*, 485 U.S. 94, 110 (1988), holding that a party seeking to reopen bears a "heavy burden." These decisions are

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[2] The BIA subsequently overturned the grant of asylum, however, leaving the grant of cancellation of removal intact.

[3] "It is a permissible exercise of our discretion to undertake review of an important issue expressly decided by a federal court where, although the petitioner did not contest the issue in the case immediately at hand, it did so as a party to the recent proceeding upon which the lower courts relied for their resolution of the issue." *U.S. v. Williams*, 504 U.S. 36, 44-45 (1992).

rendered moot by subsequent explicit congressional action when Congress unequivocally amended the statutory framework underpinning such motions to reopen by creating a new section in the INA that governs such instances. The Supreme Court decisions on this question, and the agency rules that derive therefrom, still provide the framework under which the BIA adjudicates such motions to reopen and the agency rules and decisions have yet to be conformed to the altered statutory environment and run counter to the clear intent of Congress.

I. The Board of Immigration Appeals Interpretation of 8 U.S.C. § 1129(a)(c)(7)(C)(ii) Conflicts With the Plain Meaning of Congress's Intent and Impermissibly Imposes a Higher Burden of Persuasion on a Refugee Seeker Seeking to Reopen Their Deportation Proceedings.

From the 1980 until 1992, this Court examined the authority granted to the Attorney General and the BIA to deny a motion to reopen deportation proceedings five times. [4] The last time this question was before the Court in 1992, Chief Justice Rehnquist's majority opinion cited as one of the predicate rationales for the holding, "[t]here is no statutory provision for reopening of a deportation proceeding, and the authority for such motions derive solely from regulations promulgated by the Attorney General . . . The granting of a motion to reopen is thus discretionary, and the Attorney General has 'broad discretion' to grant or deny such motions." *INS v. Doherty*, 502 U.S. at 322-23 (citations omitted).

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[4] *INS v. Jong Ha Wong*, 450 U.S. 139 (1981) (per curiam); *INS v. Phinpathya*, 464 U.S. 183 (1984); *INS v. Rios-Pineda*, 471 U.S. 444 (1985); *INS v. Abudu*, 485 U.S. 94 (1988); *INS v. Doherty*, 502 U.S. 314 (1992).

This holding, and its line of cases, now clearly is erroneous as Congress explicitly acted in passing the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IRRIRA") to create a statutory provision for reopening a deportation proceeding. Section 240(c)(7)(C)(ii) of the INA, [5] which now expressly authorizes a refugee seeker to reopen his or her deportation proceeding. The earlier rule is moot and fails to comport with the Doctrine of Agency Deference as outlined in *Chevron USA v. Natural Resources Defense Council*, 467 U.S. 837, 843-44 (1984). The Chevron analysis is two-fold: First, the court must determine "whether Congress has directly spoken to the precise question at issue." *Chevron*, 467 U.S. at 842. If the statute or the intent of Congress is clear, "that is the end of the matter, for the court, as well as the agency must give effect to the unambiguously expressed intent of Congress." *Id.* at 843. This is precisely what has occurred in this situation, Congress unambiguously acted in creating a narrow exception to the general rule governing motions to reopen, when based on changed country conditions and the relief sought is asylum or withholding from removal, and the agency has not altered their pre-existing rules one iota, subsequent to the Congressional mandate.

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[5] "There is no time limit on the filing of a motion to reopen if the basis of the motion is to apply for relief under sections 1158 or 1231(b)(3) of this title and is based on changed country conditions arising in the country of nationality or the country to which removal has been ordered, if such evidence is material and was not available and would not have been discovered or presented at the previous proceeding." INA § 240(c)(7)(C)(ii); 8 U.S.C. § 1229a(c)(7)(C)(ii).

"The principle of deference is not applicable where the language of the statute is clear on its face or the congressional intent is clearly discernible." *INS v. Cardoza-Fonseca*, 480 U.S. 412, 446 (1987); *INS v. St. Cyr*, 533 U.S. 289, 326 fn.45 (2001) ("We only defer ... to agency interpretations of statutes that, applying the normal 'tools of statutory construction,' are ambiguous.").

Here, there is no question that Congress has spoken directly to the precise question at hand in the statute, INA § 240(c)(7)(C)(ii), which clearly creates an exception to the one-year time bar imposed by the IRRIRA for any refugee seeker moving to reopen their deportation proceeding on the basis of changed country conditions. The first Chevron criterion is met here and under this Chevron analysis, this should be the end of the matter.

However, clear congressional intent has not been followed. Additionally, INA § 240(c)(7)(C)(ii), by implication, encompasses any new application for relief under sections 1158 or 1231(b)(3), it is illogical and manifestly contrary to the intent of Congress to impose a high hurtle of persuasion under the "heavy burden" standard. This "heavy burden" standard was created by this Court's analogy to a motion for a new trial in the criminal context on the basis of newly discovered evidence. See *INS v. Abudu*, 485 U.S. 94, 110 (1988), as no explicit statute existed before on this point.

In examining the actual statutory language contained within INA § 240, governing motions to reopen based on changed country conditions, there is no mention, nor indicia, that Congress ever intended to impose such a "heavy burden" of persuasion.

The plain clear language of the statute shows that no such requirement is necessary as written by Congress. The statute even incorporates within it the intended burden of persuasion, which states in relevant part, "An alien applying for relief or protection from removal has the burden of proof to establish that the alien -- (i) satisfies the application eligibility requirements; and (ii) with respect to any form of relief that is granted in the exercise of discretion, that the alien merits a favorable exercise of discretion." INA § 240(c)(4)(A); 8 U.S.C. § 1229a(c)(4)(A). Thus, the BIA's archaic "heavy burden" language impermissibly shift the onus and burden of proof onto the refugee seeker in contradiction of the United States' obligations under international law, pursuant to the 1951 United Nations Convention Relating to the Status of Refugees, 189 U.N.T.S. 150, 176 (1954), reprinted in 19 U.S.T. 6259, 6276, T.I.A.S. No. 6577 (1968).

Under international law, as currently incorporated into the United States Code in the INA, a claimant establishes his or her eligibility as a refugee when they meet the statutory definition of INA § 1101(a)(42)(A). See INA § 208(b)(1)(A). [6] There cannot be the imposition of a "heavy burden" of persuasion by the BIA, without violating U.S. commitments under international law as nowhere within the INA is there any statutory authority that raises the burden of production for an asylee to a "heavy burden."

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[6] "The Secretary of Homeland Security of the Attorney General may grant asylum to an alien who has applied for asylum in accordance with the requirements and procedures established by the Secretary of Homeland Security or the Attorney General under this section if the Secretary of Homeland Security or the Attorney General determines that such alien is a refugee within the meaning of section 1101(a)(42)(A) of this titles." INA § 208(b)(1)(A); 8 U.S.C. § 1158(b)(1)(A).

This continued misapplication of Supreme Court precedent and misinterpretation of explicit INA statutory language by the BIA, upheld by the circuit court in the instant matter, violates the will of Congress and impermissibly grants the agency broader than intended authority in this instance. This issue of whether explicit statutory language creating an exception in the limited instance of a refugee seeker moving the agency to reopen their matter based upon changed county conditions, is routinely and systematically being ignored, violating the clear Congressional intent to carve out an narrow exception to the general rule governing motions to reopen.

II. The BIA's Interpretation Violates the United States Commitment Under International Treaty Obligations Under the Principle of Non-refoulement.

When Congress passed the IRRIRA and amended the INA in 1996, the plain meaning of the new section governing motion to reopen deportation proceedings to seek relief under sections 1158 (asylum) or 1231(b)(3) withholding from deportation, comports with U.S. commitment under international law. Paramount to any meaningful refugee protection under these international treaties is the central element of non-refoulement which fundamentally is the right not to be forcibly returned or expelled to a situation which would threaten ones life or freedom. This principle is embodied in article 33 of the 1951 Convention on the status of refugees.[7]

[7] "No Contracting State shall expel or return (" refouler ") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

This principle of non-refoulement finds further expression in article 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [8] which stipulates that "No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."

Congress had this mandatory nature of the withholding from deportation provision in mind when passing the new section 240 of the INA governing a refugee seeker's motions to reopen. During the Senate Judiciary Committee's hearing on the Immigration Control and Financial Responsibility Act, the minority report cites to the United Nations High Commissioner for Refugees (UNHCR) letter written to the Chairman of the committee expressing concern that many bona fide refugees will be returned to countries where their lives or freedoms will be threatened if the new bars to asylum become law.

By permitting the administrative agency to arbitrarily and capriciously raise the burden of persuasion above and beyond anything Congress intended or expressly permitted under the statute and violative of international law is erroneous and is simply not consistent with a fair and humanitarian immigration policy.

In sum, the authorities governing a refugee seeker's motion to reopen is in substantial disarray and on such a matter of importance to the movants, the administrative courts, circuit courts, and U.S. commitments under international law.

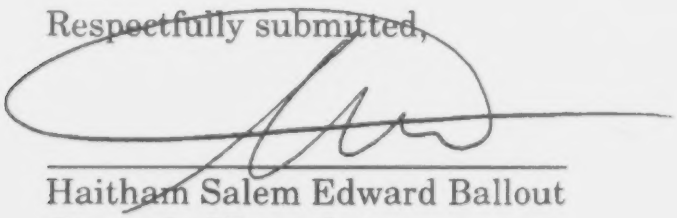
[8] Ref. 1465 U.N.T.S. 85, 23 I.L.M. 1027.

This case presents an opportunity for this Court to address the conflict between the case-law authorities and Congress's clear intent in writing explicit statutory authority for a motion to reopen based on changed country conditions and bring about much needed clarity and uniformity in this area of law. This case is not unique as this motion to reopen is heavily used by refugee seekers when conditions in their respective country change subsequent to the issuance of their deportation orders. Therefore, this Court should grant certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



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October 2007

APPENDIX

U.S. Department of Justice

Seal Department of Justice, Executive Office for Immigration Review

Executive Office for Immigration Review

Board of Immigration Appeals

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Name: KAYYAL, KEITI SALIM A70-546-366
Riders: 70-546-367

Date of this notice: 06/14/2004

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,
s/
Frank Krider

Acting Chief Clerk

Enclosure

Panel Members:
HOLMES, DAVID B.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

Files: A70-546-366-San Francisco
Date: June 14, 2004
A70-546-367

In re: KEITI SALIM KAYYAL
OSAMEH SALIM KAYYAL

IN DEPORTATION PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENTS:Stephen Shaiken, Esquire

ON BEHALF OF DHS: Kenneth S. Sogabe
Assistant District Counsel

ORDER:

PER CURIAM. The motion to reopen has been filed out of time and will be denied. The final order in these proceedings was entered by the Board on July 13, 2000. Pursuant to 8 C.F.R. § 1003.2(c)(2) (with certain exceptions), a motion to reopen in any case previously the subject of a final decision by the Board must be filed no later than 90 days after the date of that decision.

In the instant case, a motion to reopen would have been due on or before October 11, 2000. The record reflects, however, that the Board did not receive the motion until July 15, 2002. The motion to reopen was therefore filed out of time. The department of Homeland Security (the "DHS," formerly the Immigration and Naturalization Service) has filed an opposition to the motion.

Counsel for the respondents argues that the motion falls within the exception found at 8 C.F.R. § 1003.2(c)(3)(ii), alleging changed circumstances in Jordan. Specifically, he asserts that the likelihood of harm against the respondents, who are Christian, has increased since the increase in pro-Islamic activities in the Middle East following the terrorist attacks on the United States on September 11, 2001.
The Respondents have submitted documentary evidence, dated between March 2000 and July 2002. The respondents have not explained why they waited two years to present these claims, as some of this evidence was available within the 90-day filing period for motions to reopen. [1] An alien who seeks to remand or to reopen proceedings to pursue relief bears a "heavy burden" of proving that if proceedings were reopened, with all the attendant delays, the new evidence would likely change the result in the case.

[1] The Argument that the respondents' case should be reopened because relief was granted in the related care of Nicola Salim Kayyal, A71-788-725, which was heard separately, is now no longer applicable. The decision of the Immigration Judge granting cancellation of removal in that case was vacated by the Board in an order dated May 24, 2004

Matter of Coelho, 20 I&N Dec. 464 (BIA) 1992). Even considering the proffered evidence, the respondents have not shown that there is a reasonable likelihood of success on the merits if proceedings were reopened. *See Matter of Beckford*, 22 I&N Dec. 1216 (BIA 2000) (alien failed to show substantial likelihood that the result in the case would be changed if proceedings were reopened); *see generally Matter of L-O-G-*, 21 I&N Dec. 413 (BIA 1996). Sua sponte reopening is limited to exceptional situation, and is not meant to be used as a general cure for filing defects or to otherwise circumvent the regulations, where enforcing them might result in hardship. *Matter of J-J-*, 21 I&N Dec. 976, 984 (BIA 1997). We find that the respondents have failed to show that reopening would be warranted in this case.

Accordingly, the motion to reopen is denied.

s/
FOR THE BOARD

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KEITI SALIM KAYYAL; OSAMEH SALIM KAYYAL, Petitioners, v. ALBERTO R. GONZALES, Attorney General, Respondent.	No. 04-73469 Agency Nos. A70-546-366 A70-546-367 **JUDGMENT**

Upon Petition for Review of a Decision of the

Board of Immigration Appeals

The cause came on to be heard on the Transcript of the Record from the Immigration and Natralization Service and was duly submitted.

On consideration whereof, it is now here ordered and

adjudged by this court that the petition for review of the said decision of the Board of Immigration Appeals in this cause be, and hereby is **DENIED.**

Filed and entered 3/15/07

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED
JUL 16 2007
Cathy A. Catterson, Clerk
U.S. COURT OF APPEALS

KEITI SALIM KAYYAL; OSAMEH SALIM KAYYAL, Petitioners, v. ALBERTO R. GONZALES, Attorney General, Respondent.	No. 04-73469 Agency Nos. A70-546-366 A70-546-367 **ORDER**

Before: KOZINSKI, LEAVY, and BYBEE, Circuit Judges.

Petitioners Keiti Salim Kayyal and Osameh Salim Kayyal sought to reopen removal proceedings based on changed conditions in Jordan. The Board of Immigration Appeals denied the motion to reopen and we denied the subsequent petition for review. Petitioners now seek rehearing and request that the panel take judicial notice of a recent order granting a

asylum to Nicola Salim Kayyal, son of Keiti Salim Kayyal and brother of Osameh Salim Kayyal. In that order, the immigration judge concluded Nicola Salim Kayyal has a well-founded fear of persecution in Jordan based on his Christian beliefs. Given the similarities among the three family members' asylum claims, we refer the matter to mediation by the court's mediation office.

The petition for rehearing is held in abeyance pending the outcome of mediation.

Petitioners' motion to remand is denied. See 8 U.S.C. § 1252(a)(1).

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED
SEP 05 2007
Cathy A. Catterson, Clerk
U.S. COURT OF APPEALS

KEITI SALIM KAYYAL; OSAMEH SALIM KAYYAL, Petitioners, v. ALBERTO R. GONZALES, Attorney General, Respondent.	No. 04-73469 Agency Nos. A70-546-366 A70-546-367 **ORDER**

Before: KOZINSKI, LEAVY, and BYBEE, Circuit Judges.

The petition for panel rehearing and the motion for remand are denied. Judicial notice of the decisions of the immigration judge and the Board of Immigration Appeals was taken for the purpose of deciding the petition for panel rehearing and motion for remand.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED
OCT 15 2007
Cathy A. Catterson, Clerk
U.S. COURT OF APPEALS

KEITI SALIM KAYYAL; OSAMEH SALIM KAYYAL, Petitioners, v. PETER D. KEISLER, * Acting Attorney General, Respondent.	No. 04-73469 Agency Nos. A70-546-366 A70-546-367 **ORDER**

Before: KOZINSKI, LEAVY, and BYBEE, Circuit Judges.

Petitioners' application to recall and stay issuance of the mandate is denied.

* Peter D. Keisler is substituted for his predecessor, Alberto R. Gonzales, as Acting Attorney General of the United States, pursuant to Fed. R. App. P. 43(C)(2)

Convention relating to the Status of Refugees

The Convention relating to the Status of Refugees was adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950. It entered into force on 22 April 1954.

Preamble

The High Contracting Parties,

Considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,

Considering that the United Nations has, on various occasions, manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms,

Considering that it is desirable to revise and consolidate previous international agreements relating to the status of refugees and to extend the scope of and the protection accorded by such instruments by means of a new agreement,

Considering that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international- scope and nature cannot therefore be achieved without international co-operation,

Expressing the wish that all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States,
Noting that the United Nations High Commissioner for Refugees is charged with the task of supervising international conventions providing for the protection of refugees, and recognizing that the effective co-ordination of measures taken to deal with this problem will depend upon the co-operation of States with the High Commissioner,
Have agreed as follows:

Article 1 [Definition of the term "refugee"]

A. For the purposes of the present Convention, the term "refugee" shall apply to any person who:

(1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization;
Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;

(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, unwilling to avail himself of the

protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, unwilling to return to it. _(...)

* * * * *

Article 33 [Prohibition of expulsion or return ("refoulement")]

1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2.The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

http://www.unhchr.ch/html/menu3/b/o_c_ref.htm